THE HON'BLE MS. JUSTICE G.ROHINI

WRIT PETITION NO.23751 OF 2005

Dt:03.01.2006

Between:

Toddy Tappers Cooperative Society.

.. Petitioner

and

The Prohibition and Excise Inspector and others

.. Respondents

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ORDER:

Heard both sides and perused the material on record.

The petitioner is a Toddy Tappers Cooperative Society, which was issued T.C.S license for running a toddy shop at Thippapur village. The second respondent, Prohibition & Excise Superintendent, Jagitial, issued a show case notice, dated 22.09.2005, calling upon the petitioner to show cause within seven days as to why the license should not be cancelled under Section 31(1)(b) of A.P. Excise Act, 1968 (for short 'the Act') for contravention of conditions of license. In the said show cause notice, it was alleged that the licensed premises was inspected on 13.09.2005 at 6.30 p.m. by the Station House Officer, Vemulawada and during spot test, it was found that the toddy was adulterated with Chloral Hydrate. Accordingly, three toddy samples were drawn under panchanama and a case was registered under Section 37(a) of the Act. The toddy samples were sent to the Chemical Examiner, Warangal for chemical analysis and the license of the petitioner was suspended with immediate effect, pending enquiry. Aggrieved by the said order, the petitioner preferred an appeal before the third respondent, Deputy Commissioner of Prohibition and Excise, Karimnagar Division, and also sought stay of the order of suspension. However, the appellate authority refused to grant stay. In the meanwhile, the petitioner has also submitted its explanation, dated 30.09.2005, denying all the allegations made in the show cause notice. The petitioner also remitted a sum of Rs.250/- by way of demand draft, dated 28.09.2005, and requested the second respondent to send one of the samples for analysis to an independent laboratory. The grievance of the petitioner in this writ petition is that in spite of the fact that the petitioner paid the requisite amount and made a request to send the second sample for analysis, the respondents failed to consider the same and they have not even completed the enquiry, though the show cause notice was issued long back in the month of September, 2005. Hence, the writ petition seeking a declaration that the show cause notice, dated 22.09.2005, as well as the order passed by the third respondent, dated 06.10.2005, as arbitrary and illegal.

On behalf of the respondents, the second respondent filed a counter-affidavit,

in which the fact that the petitioner has already submitted the explanation has not been disputed. However, it is stated that the enquiry is still pending and appropriate orders will be passed in accordance with law. So far as the request of the petitioner to send the second sample to an independent laboratory for analysis is concerned, it is stated that since the petitioner failed to make such a request within seven days from the date of drawing of samples, the request of the petitioner was not considered.

It is true that under Rule 24 of A.P. Excise (Arrack & Toddy Licenses General Conditions) Rules 1969 (for short 'the Rules), an application for sending the second sample to an independent laboratory has to be made within seven days from the date of drawing of samples. However, in the instant case, the petitioner disputes the very inspection itself. Admittedly the request to send the second sample was made within seven days from the date of receipt of the show cause notice. In the circumstances, I am of the opinion that the respondents ought to have considered the request of the petitioner to send the second sample for analysis to an independent laboratory. It is also necessary to complete the enquiry expeditiously after affording due opportunity to the petitioner.

Accordingly, the writ petition is disposed of with a direction to the respondents to complete the enquiry initiated under the show cause notice, dated 22.09.2005, and to pass appropriate orders in accordance with law, as expeditiously as possible, preferably within a period of four weeks from the date of receipt of this order. The respondents are also directed to send the second sample for analysis to an independent laboratory forthwith and the report from the independent laboratory, shall be taken into consideration before passing the final order as indicated above. There shall be no order as to costs.

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03.01.2006

Note: Issue C.C. in three days

(B/o)

kdl